IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 22..9..2006

Coram

The Hon'ble Mr. Justice K.CHANDRU

W.P. No. 15891 of 2006

Rm.K.N.Rajan alias Rajendran .. Petitioner

vs.

1. The Government of Tamil Nadu
Rep. by its Secretary
Home Department
Fort St. George
Chennai

2. The Director General of Police
DGP Office
Mylapore, Chennai - 4

3. The Commissioner of Police
Madurai City
Madurai

4. The Inspector of Police
Anna Nagar Police Station
Madurai-20.

5. M.Sheik Dawood .. Respondents

Petition filed under Article 226 of the Constitution of India seeking for issue of writ of Mandamus for the reasons as stated therein.

For Petitioner : Mr.R.Sankarasubbu for
Mr.P. Vijayendran

For Respondents 1 to 4 : Mr.V.R.Thangavelu, GA

For Respondent 5 : Mr.AR.L.Sundaresan, SC
for Ms.AL.Gandhimathi

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O R D E R

By consent of the parties, the main writ petition itself was taken up for hearing.

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2. The writ petition has been filed praying for issuance of writ of Mandamus forbearing the respondents 1 to 4 to give police protection to the fifth respondent to run M/s Sundaram Theatre A/c dts (Majestic Cinemall), unlawfully.

3. There have been cases and counter cases between the petitioner and the fifth respondent herein. It is the case of the petitioner that he is in possession of the disputed premises, viz., M/s Sundaram Theatre dts (Majestic Mall), No.144 Lake View Street, K.K.Nagar, Madurai, and that the lower rank Police officials, at the instigation of the fifth respondent, are trying to dispossess him. However, paradoxically, he has made a prayer in the writ petition stating that the respondents 1 to 4 should be restrained from giving police protection to the fifth respondent to run the Sundaram Theatre in question. He has filed interim applications in W.P.M.P.Nos.15680 and 15681 of 2006 seeking for interim injunction restraining the fifth respondent from running the M/s Sundaram Theatre A/c dts (Majestic Cinemall) and for a direction to direct the respondents 1 to 4 to prevent the fifth respondent to enter the said Theatre in question, respectively.

4. This court, by order dated 24.5.2006, granted interim injunction subject to the result in Criminal Revision Case stated to be pending before this Court. Even though there have been proceedings and counter proceedings between the parties, as stated already, it is suffice to mention only one or two proceedings for the purpose of this case.

5. The petitioner herein filed Criminal R.C.No.1947 of 2003 challenging the order dated 15.12.2003 passed by the Sub-Divisional Magistrate - cum - Revenue Divisional Officer, Madurai, and to set aside the same and also to call for the records in M.C.No.187 of 2003 on the file of the Sub-Divisional Magistrate - cum - Revenue Divisional Officer, Madurai. The fifth respondent also filed a petition in Criminal O.P.No.2327 of 2004 before this Court seeking for a direction to the respondents 1 to 3 to give Police protection to him so as to ensure safety and security to his person and his property including the Theatre in question.

6. After keen contest before this Court, the learned Judge, by order dated 06.4.2004, remitted the matter for fresh consideration by the Sub-Divisional Magistrate - cum - Revenue Divisional Officer, Madurai, and at paragraph 26 of the order, the learned Judge observed as follows:

> "Considering all these aspects, the claims and counter claims of the parties and admissions of both sides, the case is remitted back to the Sub-Divisional Magistrate / Revenue Divisional Officer, Madurai, to consider all the documents in respect of possession of M/s Sundaram Theatre, Madurai, and

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after giving opportunities to both sides pass a final order within two months from the date of receipt of a copy of this order."

7. On remand, the Sub-Divisional Magistrate – cum – Revenue Divisional Officer, Madurai, by proceedings dated 02.11.2004, passed an order under Section 145(6) Cr.P.C. It was found in that order, a copy of which is enclosed in the typed set of papers, that the writ petitioner has not submitted any documentary proof for enjoying the disputed premises and also found that the Sundaram Theatre is completely under the possession and enjoyment of the fifth respondent herein.

8. Once again, the said order was challenged by the writ petitioner in Crl. R.C.(MD)No.609 of 2005 along with a petition for stay in Crl.M.P.(MD)No.5346 of 2005 and Madurai Bench of this Court passed an order dated 14.11.2005 granting stay of all further proceedings in M.C.No.187 of 2003 dated 02.11.2004 on the file of the Sub-Divisional Magistrate – cum – Revenue Divisional Officer, Madurai, for a period of four weeks from the date of order and by an order dated 13.12.2005, it was extended by two weeks and subsequently, the stay was extended by orders of the Madurai Bench of this Court and finally, by order dated 27.4.2006, it was ordered to be posted after summer vacation extending the stay till then. Thereafter, after vacation, the Court was re-opened on 12.6.2006 and we do not know the fate of the above Crl.R.C. However, during the vacation, the petitioner has moved the Principal Bench of this Court at Madras with the present writ petition and got the order of interim injunction which continuance was made subject to the result in the Criminal R.C.

9. I have heard Mr.R.Sankarasubbu, learned counsel appearing for Mr.P.Vijendran, for the writ petitioner as well as Mr.V.R.Thangavelu, learned Government Advocate representing the respondents 1 to 4 and Mr.AR.L.Sundaresan, learned Senior Counsel appearing for Ms.AL.Gandhimathi, for the fifth respondent and perused the records.

10. Mr.R.Sankarasubbu, learned counsel representing for Mr.P.Vijendran, appearing for the petitioner, contended that since the interim order obtained by him is subject to the result of the Criminal R.C. filed by him, the matter need not be disposed of pending the outcome of the same. He also submitted that if Police protection is given to the fifth respondent, he may try to use protective cover and gain control over the Theatre in question and hence, the long arm of the Court should not be stretched to the fifth respondent.

11. On the contrary, Mr.AR.L.Sundaresan, learned Senior Counsel representing Ms.AL.Gandhimathi, appearing for the fifth respondent, filed a counter affidavit and also typed set of papers containing several other documents, which have not been filed by the writ petitioner. He submitted that the stay granted in Criminal R.C.No.1947 of 2003 is only in respect of further proceedings in M.C.No.187 of 2003

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on the file of the Sub-Divisional Magistrate – cum – Revenue Divisional Officer, Madurai, pending disposal of the Criminal Revision Case and it has got nothing to do with the present writ petition and, therefore, the present writ petition is a clear abuse of process of this Court. The learned Senior Counsel also produced Sale Deed dated 05.8.2002 showing the purchase of the property in question from its erstwhile owner. Subsequent to the purchase, the fifth respondent has been paying Property Tax and the photocopies of the receipts have also been enclosed in the typed set of papers, which are found in pages 73-79 of the typed set of papers filed by the fifth respondent. The learned Senior Counsel also drew the attention of this Court to the letter by the Corporation of Madurai dated 28.02.2004 addressed to the fifth respondent, granting sewerage and water connection. As stated already, the property in question, is a Cinema Theatre and for running the said Theatre, it requires the permission to be issued by the District Collector and necessary Form 'C' licence should be obtained by the Theatre owner.

12. It is seen from the proceedings dated 15.3.2004 issued by the District Collector, Madurai, the District Collector has granted Form 'C' licence in favour of the fifth respondent and on the basis of the transfer application made by the original Form 'C' holders, this licence was issued to him in terms of the Tamil Nadu Cinemas (Regulation) Rules 1957. Pursuant to the licence granted by the District Collector, Form 'C' Certificate has been produced before this Court and he has been paying Entertainment Tax in terms of the Tamil Nadu Entertainment Tax Act 1939. Form II Registers showing the sale of tickets on 12.5.2006 and 16.5.2006 have also been produced before this Court. Further, the fifth respondent has also produced receipt issued by the Tamil Nadu Electricity Board towards payment of electricity charges for the month of April 2006 for the Theatre in question and the receipt is dated 18.5.2006. All these documents are also supported by an affidavit dated 24.8.2006 filed by the fifth respondent.

13. In the counter affidavit, the fifth respondent has stated that he has put up the construction in the premises and he has borrowed heavy money for purchasing the Theatre. There are 35 employees without any work and unless he is allowed to run the Theatre, irreparable hardship will be caused to him. He has also stated that the writ petitioner is only a lessee and his licence for running the Theatre expired as early as 31.3.2000. The injunction granted by this Court is causing irreparable hardship and he prayed that the same may be vacated.

14. Mr.Sankarasubbu, learned counsel appearing for the writ petitioner contended that when question of possession itself is disputed, vacating the injunction does not arise and this Court should not embark upon any such exercise at this juncture. He also stated that if the Criminal Revision Case filed by him is decided in his favour, question of possession will be determined in his favour. Then the question of grant of any Police protection to the fifth respondent

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will not arise.

15. I am unable to accept the contentions of the learned counsel appearing for the petitioner for the simple reason that in a proceedings under Section 145 Cr.P.C., the title of the parties are not gone into and the Sub-Divisional Magistrate has been asked to go into only the short question as to who was in possession before the breach of Peace and he was bound to restore the possession to that person, who has been deprived of the same. Even if the petitioner succeeds, that will not confer any title on him. On the contrary, the learned counsel for the fifth respondent referred to the specific finding of the Sub-Divisional Magistrate - cum - Revenue Divisional Officer, Madurai, holding that the fifth respondent was in possession and that the writ petitioner failed to produce any documentary evidence before him. Even otherwise, 'C' Form licence of the Theatre stands in the name of the fifth respondent and he has been paying the Property Tax, Entertainment Tax and also the electricity charges in respect of the Theatre. He has specifically averred that there are 35 employees engaged in the Theatre and they should be paid salary and if the Theatre is not functioning, he will be put to irreparable loss.

16. Under the above circumstances, this Court finds that the prayer in the writ petition is really surprising and such a prayer can never be countenanced by this Court. There may be cases, where a person may be seeking Police protection against the threat of any encroachment and it is for authorities to consider the threat perception and accord necessary police protection. It is not open to the third party to come up with the plea not to give any protection to the person or property in question. Such a prayer goes against the spirit of Article 21 of the Constitution of India by which every person in this country is having his liberty and livelihood protected by the State. In any event, as to whether the person should be granted Police protection or not, is not a question that should be gone into by this Court and it is entirely for the authorities to determine. Even before the authorities could determine such a situation, the writ petitioner has rushed to this Court with a negative prayer of preventing the police protection being given to the fifth respondent.

17. In this case, it is relevant to refer to the reason decision of the Supreme Court reported in (2006) 4 SCC 501 [P.R.MURALIDHARAN AND OTHERS vs. SWAMI DHARMANANDA THEERTHA PADAR AND OTHERS] wherein, speaking for the Court, S.B.Sinha, J. held as follows:

> "Indeed the jurisdiction of the writ court is wide while granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution.
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> However, in the event the first respondent feels that he as a person should receive protection to his life, he may make an appropriate representation

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to the superintendent of Police who after causing an inquiry made in this behalf may pass an appropriate order as is permissible in law."

P.K.Balasubramanyan, J., who concurred with the judgment of Sinha, J., held as follows:

"A writ of mandamus directing the police authorities to give protection to the person of a writ petitioner can be issued, when the court is satisfied that there is a threat to his person and the authorities have failed to perform their duties and it is different from granting relief for the first time to a person either to allegedly protect his right to property or his right to an office, especially when the pleadings themselves disclose that disputed questions are involved.

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....

A writ for "police protection" so-called, has only a limited scope, as, when the court is approached for protection of rights declared by a decree or by an order passed by a civil court. It cannot be extended to cases where rights have not been determined either finally by the civil court or, at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order."

18. It is further seen from another judgment of the Supreme Court reported in (2006) 5 SCC 539 [HOWRAH MILLS CO. LTD. AND ANOTHER vs. MD.SHAMIN AND OTHERS] wherein it was held as follows:

"One would have expected the State of West Bengal to readily respond to a request for protecting the property from trespassers so as to ensure that the revival of a sinking industry is achieved and its workers are protected. Even otherwise, in a situation like the present, it is the duty of the police of the State to give necessary protection to the struggling industry to tide over the crises and protect its property from interference by lawless elements and unauthorised persons. Going by the Police Regulations Bengal, 1943, Regulations 666 and 669, it may even be possible to say that the protection in such circumstances should be afforded even without insisting on payment by the private party seeking protection.

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Mr.Roy, learned counsel for the State has categorically submitted before us that the State

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> would perform its duties in the matter of maintenance of law and order and it shall provide protection to the property of the first appellant Company in discharge of the statutory duties of the State and the police. In this context, the authorities may consider whether it is necessary to engage a large force of policemen at this stage and consider posting only such number of personnel as may be found necessary for the protection of the property."

19. In the light of the clear pronouncements of the Apex Court, the writ petition filed by the petitioner is misconceived and clearly not maintainable. It is not open to the petitioner to come before this Court under Article 226 of the Constitution of India and seek for an interim order pending a final decision in another Criminal Revision Case pending before the Madurai Bench and use the order in the writ petition as a stop gap arrangement. The writ petitioner is ill-advised to file the present writ petition and if he wants, he should have sought whatever relief that he is entitled to, only in the Criminal Revision Case pending before the other Bench of this Court.

20. In any event, as held by the Supreme Court, question of police protection will have to be determined by the authorities concerned in an objective manner on request of the person whose life is under threat or his property is encroached upon illegally. In the pleadings of both the parties, there is no averment that the fifth respondent has already approached the authorities seeking for police protection to run the Theatre. In the fight between the writ petitioner and the fifth respondent, the Theatre business could not be run. In any event, when there is a public exhibition of a cinema and where a large number of people are likely to converge, in order to avoid any law and order problem, it is always open to the Theatre owner to seek for police protection to deal with the situation. In the present case, there has been a keen fight between the writ petitioner and the fifth respondent. It is always open to the fifth respondent to seek for protection from the Police authorities to run the Theatre in question and as and when he seeks any such request, the same shall be considered by the authorities keeping in mind the authoritative pronouncements of the Supreme Court referred to above.

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21. In the light of the above, the writ petition stands dismissed. Interim injunction already granted by this Court stands vacated. In view of the same, W.P.M.P.No.15680 and 15681 of 2006 and W.V.M.P.No.1670 of 2006 shall stand closed.

gri

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary
   Government of Tamil Nadu
   Home Department
   Fort St. George
   Chennai

2. The Director General of Police
   DGP Office
   Mylapore, Chennai - 4

3. The Commissioner of Police
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   Anna Nagar Police Station
   Madurai

1 CC TO MRS.AL. GANDHIMATHI, ADVOCATE SR 44865

1 CC TO MR.P. VIJENDRAN, ADVOCATE SR 44597

order in

W.P. No.15891 of 2006

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